

No. 00-3314

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

REAZUL ISLAM,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

**PETITION FOR REVIEW OF AN ORDER OF
THE BOARD OF IMMIGRATION APPEALS**

BRIEF FOR RESPONDENT

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SUMMARY OF THE CASE–NO ORAL ARGUMENT REQUESTED

In this immigration case, Petitioner Reazul Islam (“Islam”) seeks review of a final order of the Board of Immigration Appeals (“Board” or “BIA”) finding that Islam is not eligible for asylum under the Immigration and Nationality Act (“INA” or “Act”) § 208, 8 U.S.C. § 1158 (1994), because he failed to establish past persecution or a well-founded fear of persecution in Bangladesh. Islam has not shown on petition for review, as he must, that the evidence was so compelling that no reasonable factfinder could fail to find that he established eligibility for asylum. Although Islam claims that the Board ignored evidence in the record that would have established that he suffered persecution, he does not specifically indicate what evidence the Board did not consider or how that evidence compels the factfinder to conclude that he established a well-founded fear of persecution. Contrary to Islam’s claims, the record demonstrates that the Board properly considered the evidence and concluded that Islam does not have a well-founded fear of persecution.

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REAZUL ISLAM,

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Respondent.

**PETITION FOR REVIEW OF AN ORDER OF
THE BOARD OF IMMIGRATION APPEALS
INS A73 411 569**

BRIEF FOR RESPONDENT

STATEMENT OF JURISDICTION

In this immigration case, the petitioner, Reazul Islam (“Islam” or “Petitioner”), seeks this Court’s review of a final order of deportation issued by the Board of Immigration Appeals (“Board” or “BIA”) on August 24, 2000. The Board’s jurisdiction arose under 8 C.F.R. §§ 3.1(b) and 240.53(a)(2000), which grant the Board appellate jurisdiction over decisions of immigration judges in

deportation cases.

This Court's jurisdiction arises under Section 106(a) of the Immigration and Nationality Act ("INA" or "Act"), 8 U.S.C. § 1105a(a), as amended by Section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sept. 30 1996). Although Section 106 of the INA has been repealed by IIRIRA and replaced with a new judicial review provision codified at 8 U.S.C. § 1252, et seq., (Supp. IV 1998), the repeal applies only to aliens placed in immigration proceedings after April 1, 1997. See IIRIRA §§ 306(c)(1), 309(a) and (c). In IIRIRA, Congress enacted certain transitional rules for judicial review, amending Section 106. The transitional rules apply to all final orders of deportation issued by the Board on or after October 31, 1996, when the alien was placed into proceedings before April 1, 1997. See IIRIRA §§ 306(c)(1) and 309(a) and (c). Because the Board issued its decision in this case on August 24, 2000, and the petitioner was placed in proceedings before April 1, 1997, Section 106 of the INA, as amended by the transitional rules, applies. See IIRIRA 309(c)(4); Kalaw v. INS, 133 F.3d 1147, 1149-50 (9th Cir. 1997).

Section 309(c)(4)(C) of IIRIRA provides that "the petition for judicial review must be filed not later than 30 days after the date of the final order of

exclusion or deportation." In this case, Islam filed a petition for review on

September 25, 2000, which was within 30 days of the Board's August 24, 2000 decision. Therefore, the petition for review is timely.

STATEMENT OF THE ISSUE

Whether there is substantial evidence in the record to support the Board's findings that Islam failed to establish past persecution or a well-founded fear of future persecution in Bangladesh.

Most relevant cases: Gonahasa v. INS, 181 F.3d 538 (4th Cir. 1999); Manivong v. INS, 164 F.3d 432 (8th Cir. 1999).

Most relevant statutory provision: INA § 208(a), 8 U.S.C. § 1158(a)(1994).

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

Islam challenges the Board's decision denying him asylum and withholding of deportation. A.R. 2-3.¹ On January 20, 1996, the Immigration and Naturalization Service ("INS") issued an Order to Show Cause to Islam, alleging deportability under INA § 241(a)(1)(C)(i), 8 U.S.C. § 1251(a)(1)(C)(i)(Supp. IV

1998), for failing to comply with the conditions of the nonimmigrant status under

¹The abbreviation "A.R." followed by a number or numbers refers to a page or pages in the Certified Administrative Record filed with this Court on November 27, 2000.

which he was admitted pursuant to INA § 101(a)(15), 8 U.S.C. 1101(a)(15)(Supp. IV 1998). Id. at 300. Islam admitted the factual allegations in the Order to Show Cause and requested relief in the form of asylum and withholding of deportation. Id. at 31-32. After a hearing, the Immigration Judge denied Islam's application for asylum and withholding of deportation but granted Islam the privilege of voluntary departure. Id. at 31-37. Islam appealed the Immigration Judge's decision to the Board, and the Board denied Islam's appeal on August 24, 2000. Id. at 2-5. On September 25, 2000, Islam filed a petition for review of the Board's decision with this Court.

B. Statement of Facts

Islam is a male native and citizen of Bangladesh who entered the United States on July 23, 1993, as a nonimmigrant student at the University of Kansas. Id. at 31, 52-53, 55. Islam left the University of Kansas after December, 1994. Id.

Islam's asylum claim, based on his testimony and supporting documents, is that he will be persecuted on account of his father's political activities. Id. at 32, 59. Islam's father, Monirul Islam ("Monirul"), has been a member of the central committee of the Jatiyo party in Bangladesh for several years and was a two-term member of parliament when the Jatiyo party was in power. Id. at 32, 85, 95.

Monirul was well-connected with the governing elite when the Jatiyo party had a

majority in the parliament. Id. Ismal is also a member of the Jatiyo party and has been seen with prominent party members. Id. at 32, 137.

When the Bangladesh Nationalist Party (“BNP”) took control of the government in 1991, Monirul lost his seat in parliament. Id. at 32, 119. Islam testified that the family’s apartment complex was attacked by a student faction of the BNP, and that his father received life-threatening phone calls and letters from people he assumed were associated with the BNP. Id. at 32, 86-87. In addition, Monirul lost government permission to operate his trucking business when the BNP took power. Id. at 33.

Islam testified that early in 1992, he was stopped by members of the BNP student faction while riding in his father’s car. Id. at 33, 88. The students pulled Islam and his driver out of the car and seriously damaged the car. Id. The students did not, however, harm Islam or the driver. Id.

On August 18, 1992, Rashed Kahn Menon (“Menon”), leader of the Bangladesh Workers Party, was shot less than five blocks from the Islam family’s apartment. Id. at 33, 89-91. Subsequently, approximately fifty armed individuals forcibly entered the family’s apartment complex, arrested Monirul, and took him away. Id. Monirul was charged with attempted murder and held without bail until

October 8, 1992, when a Bangladesh court ordered that he be released on bail. Id.

Monirul was never convicted of the murder. Id.

Islam testified that he learned that the police wanted to talk to or arrest him regarding the murder of Menon and decided to stay with an uncle for about two weeks. Id. at 33, 91-92. Islam returned home and lived there for a year without incident before leaving for the United States. Id.

Monirul remains an active member of the Jatiyo party's central committee and currently works as a license custom clearing agent. Id. at 33, 123-26. He owns five locations around Bangladesh and employs about forty-five people. Id. Islam claims that he will be physically harmed by agents of the BNP if he returned to Bangladesh because they will view him as a future leader of the Jatiyo party. Id. at 33, 95, 144-45.

C. The Decision of the Immigration Judge

In a decision dated August 12, 1997, the Immigration Judge found that, based on Islam's admissions to all of the factual allegations contained in the Order to Show Cause, deportability had been established by clear, convincing, and unequivocal evidence. Id. at 31. The Immigration Judge then turned to Islam's application for asylum and withholding of deportation. Id.

The Immigration Judge noted that Islam did not claim that he experienced past persecution in Bangladesh. Id. at 34. The Immigration Judge, nevertheless,

found that, although the incident where the student faction of the BNP attacked Islam's car might raise the issue of past persecution, the incident did not amount to past persecution. Id. The Immigration Judge, therefore, concluded that Islam failed to establish that he suffered past persecution. Id.

The Immigration Judge also found that Islam did not establish a well-founded fear of persecution. Id. The Immigration Judge found that, given the changes in Bangladesh's political landscape since Islam's departure, even if he had a genuine fear of persecution at the time he left, it is unlikely that his fear would still be valid. Id. at 35.

The Immigration Judge found that changed conditions in Bangladesh since Islam's arrival in the United States cast doubt on whether his fear of returning to Bangladesh is genuine or reasonable. Id. at 34. The Immigration Judge found that since 1993 conditions in Bangladesh have become increasingly favorable for the members of opposition political parties. Id. The Jatiyo party was able to field candidates in local elections in 1993 and 1994, and Jatiyo party candidates were successful in bids for public office. Id.

The Immigration Judge also noted that in June 1996, the BNP lost power in parliamentary elections to the Awami league. Id. at 35. Although the Jatiyo party

only controls about one-tenth of the seats in parliament, one of its members serves

as the Minister of Communications, and a number of others serve in the Cabinet.

Id. The Immigration Judge further noted that neither the State Department nor Islam suggested that the Awami league government would persecute the Jatiyo party or its members. Id.

The Immigration Judge found that although Bangladesh's political process is not free from violence, the level of violence has been decreasing, and the remaining violence has not been directed specifically or solely at Jatiyo party members or leaders. Id. The Immigration Judge found that Islam was unable to articulate what he feared would happen to him if he returned to Bangladesh. Id. The Immigration Judge found that Islam could not show that any violence accompanying the political process is particularized, and that "politicians who engage only in legitimate political activities and advocacy usually have little or nothing to fear from rival political groups." Id. The Immigration Judge also found it relevant that Islam's father has lived in Bangladesh for almost five years without being harassed. Id. at 36.

In addition to rejecting Islam's asylum application, the Immigration Judge found that Islam failed to meet the higher burden of proof required for withholding of deportation. Id. The Immigration Judge did, however, grant Islam voluntary departure. Id.

D. The Decision of the Board of Immigration Appeals

In a decision dated August 24, 2000, the Board dismissed Islam's appeal. Id. at 2-3. The Board found that after a review of the record of proceedings, the Immigration Judge's decision, and Islam's contentions on appeal, the Immigration Judge properly evaluated the facts presented by Islam in support of his asylum claim and correctly concluded that a reasonable person in his position would not fear persecution if he were to return to Bangladesh. Id. at 3. The Board, therefore, found that "because the Immigration Judge correctly found that [Islam] failed to establish either past persecution or a well-founded fear of persecution, we will uphold his decision for the reasons set forth therein."² Id.

SUMMARY OF THE ARGUMENT

An applicant bears the burden of establishing eligibility for asylum. Upon petition for review, the Board's findings must be sustained by this Court unless a reasonable factfinder would be compelled to reach a contrary result.

Islam failed to meet his burden of establishing eligibility for asylum, as the

Board correctly found, and has not shown that a reasonable factfinder would be

²Where, as here, the Board clearly adopts and incorporates the Immigration Judge's reasoning, the court reviews the Immigration Judge's decision. See Martirosyan v. INS, 229 F.3d 903, 908 (9th Cir. 2000). Because the Board in this case adopted the reasoning of the Immigration Judge, this brief will attribute the reasoning in the Immigration Judge's decision to the Board.

compelled to reach a contrary result. Islam failed to establish past persecution or a well-founded fear of persecution.

Islam has not shown that the evidence was so compelling that no reasonable factfinder could fail to find that he established past persecution. The Board found that Islam did not argue that he experienced past persecution in Bangladesh, and Islam does not dispute that finding on appeal. The Board, nevertheless, found that Islam did not suffer past persecution, and its finding should be affirmed. The incidents that Islam has alleged occurred, including the attack on Islam's car by the BNP student faction, are not sufficient to constitute persecution.

Islam has not shown on petition for review, as he must, that the evidence was so compelling that no reasonable factfinder could fail to find that he established a well-founded fear of persecution. Instead, the record establishes that the Board correctly determined that country conditions have changed in Bangladesh. The record also establishes that the Board properly analyzed Islam's particular circumstances. The Board correctly found that the evidence did not show that Islam has a well-founded fear of persecution, given that Islam's father has lived in Bangladesh for almost five years without being harassed, Islam returned home after his father's arrest and lived there for a year without incident

before leaving, and Islam has been absent from Bangladesh since 1993 and did not

provide evidence that anyone was looking for him or his family members.

ARGUMENT

I. Standard Of Review

“An application for asylum is a matter statutorily vested in the discretion of the Attorney General, acting through the Board.” Feleke v. INS, 118 F.3d 594, 597 (8th Cir. 1997). “The BIA’s decision that an alien is ‘not eligible for asylum must be upheld if supported by reasonable, substantial, and probative evidence on the record considered as a whole.’” Nyonzele v. INS, 83 F.3d 975, 980 (8th Cir. 1996)(quoting INS v. Elias-Zacarias, 502 U.S. 478, 481 (1992)(quotation omitted)).

The applicant bears a “heavy burden” to overturn the Board’s finding that the applicant did not establish a well-founded fear of future persecution. See Hamzehi v. INS, 64 F.3d 1240, 1242 (8th Cir. 1995). To overturn the Board’s adverse finding, the applicant “must show that the evidence ‘was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution.’” Id. (quoting Elias-Zacarias, 502 U.S. at 484 (1992)). In making the determination of whether the evidence compelled a finding of a fear of persecution, however, the court “may not reweigh the evidence.” Miranda v. INS, 139 F.3d 624, 626 (8th Cir. 1998). “[A] reviewing court is not entitled to reverse ‘simply because it is convinced that it would have decided the case differently.’” Anton v. INS, 50 F.3d

469, 472 (7th Cir. 1995)(quoting Milosevic v. INS, 18 F.3d 366, 371 (7th Cir. 1994)). Instead, the court’s “inquiry is whether there is substantial evidence for the findings made by the BIA, not whether there is substantial evidence for some other finding that could have been, but was not, made.” Mazariegos v. Office of the U.S. Attorney General, 2001 WL 117479, *4, ___ F.3d ___ (11th Cir. 2001).

II. Statutory Framework And Burden Of Proof In Asylum Cases

Under INA § 208(a), 8 U.S.C. § 1158(a), the Attorney General has the discretion to grant asylum to “refugees.” See INS v. Cardoza-Fonseca, 480 U.S. 421, 428 n.5 (1987); 8 U.S.C. § 1158(a)(Supp. IV 1998). The INA defines a “refugee” as a person unable to return to his or her country “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1101(a)(42). Under the statute, therefore, eligibility for asylum requires a showing by the applicant that he or she has suffered persecution or has a well-founded fear of future persecution “on account” of one of the grounds set forth in the statute. 8 U.S.C. § 1101(a)(42)(A).

An applicant bears the burden of establishing eligibility for asylum. See Feleke 118 F.3d at 598. “In the usual case, the critical inquiry is whether the applicant has a well-founded fear of future persecution upon return to his or her

country.” Cigaran v. INS, 159 F.3d 355, 357 (8th Cir. 1998). A well-founded fear of future persecution must be both “subjectively genuine and objectively reasonable.” Hamzehi 64 F.3d at 1242. “To prove objective reasonableness, the alien must show, based upon credible, direct, and specific evidence, that a reasonable person in the same circumstances would fear persecution if returned to the petitioner’s native country. The fear must have a basis in reality and must be neither irrational nor so speculative or general as to lack credibility.” Miranda 139 F.3d at 627. If, however, the applicant establishes past persecution, the applicant is entitled to a presumption of a well-founded fear of future persecution and the burden then shifts to the INS to show by a preponderance of the evidence that “conditions in the applicant’s country . . . have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he or she were to return.” Id. (quoting 8 C.F.R. § 208.13(b)(1)(i)).

III. Islam Has Not Shown That The Evidence Is So Compelling That No Reasonable Factfinder Could Fail To Find That He Is Eligible For Asylum

On appeal, Islam argues that the Board ignored evidence in the record that

would have sustained his burden of proof that he suffered past persecution and has a well-founded fear of persecution. Pet. Br. at 9. Islam alleges that the Board erred by not finding that the following incidents constitute persecution or a well-founded fear of persecution: 1) Islam's membership in the Jatiyo party; 2) Monirul receiving death threats, both by letter and phone; 3) the apartment in which Islam lived being broken into and some personal property being destroyed; 4) Islam's driver being forcibly removed from the family car; 5) Monirul being charged with the attempted murder of the leader of the Bangladesh Workers Party; and 6) the police wishing to "interview" Islam during his father's detention. Id. at 11-12. As discussed below, contrary to Islam's claims, the Board did not fail to consider the evidence submitted by him, nor does the evidence establish either past persecution or a well-founded fear of future persecution in Bangladesh.

A. Islam has not shown that the evidence is so compelling that no reasonable factfinder could fail to find that he established past persecution.

The Board noted that Islam did not argue that he experienced past persecution in Bangladesh. A.R. 34. The Board, nevertheless, found that Islam

failed to establish that he suffered past persecution. Id. On appeal, Islam does not allege that the Board erred in finding that he did not argue that he experienced past

persecution or that he did not in fact experience past persecution. Islam has, thus, waived the argument. See United States v. Big D Enterprises, Inc., 184 F.3d 924, 931 n.2 (8th Cir. 1999).

Nevertheless, the Board was correct in finding that Islam failed to establish that he suffered past persecution.³ The incidents that Islam has alleged occurred, including the attack on Islam's car by the BNP student faction, are not sufficient to constitute persecution. See Minwalla v. INS, 706 F.2d 831, 835 (8th Cir. 1983)(stating that "[p]ersecution requires a showing of a threat to one's life or freedom Mere economic detriment is not sufficient"); Feleke, 118 F.3d at 598 (same); Nyonzele v. INS, 83 F.3d at 983 (same); Mikhael v. INS, 115 F.3d

299, 304 (5th Cir. 1997)(finding that the Board was not compelled to find past persecution where, in addition to other acts of persecution, the applicant's home

³Persecution is an "extreme concept." Lim v. INS, 224 F.3d 929, 936 (9th Cir. 2000). Persecution is "either a threat to the life or freedom of, or the infliction of suffering and harm upon, those who differ in a way regarded as offensive." Miranda v. INS, 139 F.3d 624, 626 (8th Cir. 1998)(citation omitted). This Court has stated that, under 8 U.S.C. § 1101(a)(42)(A), there are two required components of persecution:

[F]irst, the harm or suffering had to be inflicted upon the individual in order to punish him or her for possessing a belief or characteristic the persecutor sought to overcome; and second, the harm or suffering had to be inflicted either by the government of a country or by persons or an organization that the government was unable or unwilling to control.

Id. at 627.

was bombed and destroyed and the family car was stolen).

B. Islam has not shown that the evidence is so compelling that no reasonable factfinder could fail to find that he established a well-founded fear of future persecution.

As explained above, the applicant also has the burden of establishing a well-founded fear of future persecution. In this case, because the Board found that Islam had not established past persecution, the burden remained on Islam to establish a well-founded fear of future persecution.⁴

The Board was correct in finding that the record does not show that Islam established a well-founded fear of future persecution in Bangladesh. In this case, the Board properly looked to reports issued by the United States Department of State and found that given the dramatic changes in Bangladesh's political landscape

⁴Even if the Board erred in not finding past persecution and requiring the government to rebut the presumption of a well-founded fear of future persecution, which it did not, remand in this case would not be necessary because the evidence in the record mandates the conclusion that the INS could rebut any presumption of a well-founded fear of persecution. See Nazaraghaie v. INS, 102 F.3d 460, 464 (10th Cir. 1996). "The shifting of an evidentiary burden of preponderance is of practical consequence only in the rare event of an evidentiary tie: If the evidence that the parties present balances out perfectly, the party bearing the burden loses." Cigaron, 159 F.3d at 357. Therefore, an erroneous refusal by the Board to shift the burden to the INS injures the applicant only if the evidence is in equipoise, causing the applicant to lose because he had the burden of proof. See id. Because the evidence clearly shows that Islam does not have a well-founded fear of persecution, an erroneous refusal to shift the burden to the INS would not have injured Islam.

since Islam's departure, even if he had a genuine fear of persecution at the time he left, it is unlikely that his fear would still be valid today. A.R. 35. "A State Department report on country conditions is highly probative evidence in a well-founded fear case." Gonahasa v. INS, 181 F.3d 538, 542 (4th Cir. 1999)(citing Mitev v. INS, 67 F.3d 1325, 1332 (7th Cir. 1995) and Kazlauskas v. INS, 46 F.3d 902 (9th Cir. 1995)); see also Vaduva v. INS, 131 F.3d 689, 691 (7th Cir. 1997)(noting that it is reasonable for the Board to place weight on reports issued by the State Department). "Absent powerful contradictory evidence, the existence of a State Department report supporting the BIA's judgment will generally suffice to uphold the Board's decision." Gonahasa, 181 F.3d at 542. Giving great weight to State Department reports is vital because "[a]ny other rule would invite courts to overturn the foreign affairs assessments of the executive branch." Id. at 542-43.

As the Board noted, the Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, Bangladesh: Profile of Asylum Claims and Country Conditions (1996)("Bangladesh Profile"), found that Jatiyo Party candidates are able to campaign freely, hold rallies, and distribute and display campaign

materials. Id. at 3, A.R. 182. In 1996, the Bangladesh elections were free and fair and the Jatiyo won thirty seats in the Bangladesh parliament. Id. at 4, A.R. 183.

The Bangladesh Profile noted that “[a] Jatiyo Party member of parliament is serving as Minister of Communications and a number of other Jatiyo party members are also serving in the Cabinet.” Id.

The Bangladesh Profile also found that although members of the Jatiyo Party no longer enjoy the privileges which political power gave them in the 1982-90 period, “[t]he conditions did not, however, deteriorate to the point that a Jatiyo Party member was no longer able to live in his country.” Id. at 6, A.R. 185. The Bangladesh Profile explained that Jatiyo Party members are not subject to persecution, saying that:

There is some evidence that prominent between 1991 and 1996 the BNP Government harassed Jatiyo Party members and/or supporters as well [as] high level members of the Ershad government. These individuals were able to defend themselves in court proceedings and have the same judicial rights as other Bangladeshis. The harassment experienced by some high level Jatiyo party members is not sufficient to justify the conclusion that Jatiyo Party membership in itself accounted for severe mistreatment. The Jatiyo party was and continues to be a legal party in Bangladesh and its leaders and members are not subject to systematic persecution by the government.

Id. See also U.S. Department of State, Bangladesh Country Report on Human Rights Practices for 1995, at 1295, A.R. 193 (stating that there were no reports of

politically motivated disappearances in Bangladesh in 1995).

In addition to properly considering the State Department's reports on the country conditions in Bangladesh, the Board analyzed how Islam's particular situation is affected by the changed conditions in Bangladesh. The Board properly found it relevant that Islam's father has lived in Bangladesh for almost five years without being harassed. A.R. at 36. See Manivong v. INS, 164 F.3d 432, 433 (8th Cir. 1999)(finding the fact that the applicant's father and children were living in home country without incident undercut well-founded fear of persecution); Marquez v. INS, 105 F.3d 374, 380 (7th Cir. 1997)(noting that the applicants' family, including their children, lived in the Philippines without incident after the applicants' left for the United States).

In addition, Islam returned home after his father's arrest and lived there for a year without incident before leaving for the United States. This Court has found that an applicant remaining in the native country after the alleged persecution undercuts the applicant's claim of a well-founded fear of persecution. See Safaie v. INS, 25 F.3d 636, 640-41 (8th Cir. 1994); see also Marquez, 105 F.3d at 380 (finding it significant that it took the applicant five months to flee the Philippines and that the applicant returned twice and, although claiming to have been in hiding, stayed for long periods of time without trouble); Ravindran v. INS, 976

F.2d 754, 760 (1st Cir. 1992)(finding that the fact that the applicant continued to live in Sri Lanka undisturbed for one year after the alleged persecution undercut the applicant's claim that he had a well-founded fear of persecution); Alvarez-Flores v. INS, 909 F.2d 1, 5 (1st Cir. 1990)(finding it significant that the applicant continued to live in Bangladesh for four more years after the alleged persecution).⁵ Islam has not shown that the evidence was so compelling that no reasonable factfinder could fail to find that he established a well-founded fear of persecution. Although Islam claims that the Board ignored evidence in the record that would have established that he suffered persecution, he does not specifically indicate what evidence the Board did not consider or how that evidence compels a reasonable factfinder to conclude that he established a well-founded fear of persecution. Moreover, Islam makes no attempt to explain how the reports issued by the State Department are inaccurate or do not apply to him. He makes no effort to explain how the country conditions in Bangladesh create a well-founded fear of

⁵It is also significant that Islam has been absent from Bangladesh since 1993 and did not provide evidence that anyone was looking for him or his family members. See Nyonzele, 83 F.3d at 982 (noting that the applicant's evidence of family persecution occurred over a decade ago and holding that the applicant did not show that the "rather dated events" provided an objectively reasonable basis for a well-founded fear of persecution); see also Marquez, 105 F.3d at 380 (finding it significant that the alleged acts of persecution occurred over eight years ago).

persecution. Contrary to Islam's claims, the record demonstrates that the Board properly considered the evidence and concluded that Islam does not have a well-founded fear of persecution in Bangladesh.⁶ Islam has not identified any record evidence that would compel a different result.

⁶An application for asylum made in deportation proceedings is also considered to be a request for withholding of deportation. 8 C.F.R. § 208.3(b)(2000). Islam does not allege that the Board erred in finding that he did not establish eligibility for withholding of deportation. In any case, because the clear probability standard is more difficult to meet than the well-founded fear standard for asylum, and substantial evidence supports the Board's denial of asylum in this case, this Court must also affirm the Board's denial of withholding of deportation. See Kratchmarov v. Heston, 172 F.3d 551, 555 (8th Cir. 1999).

CONCLUSION

For the foregoing reasons, the decision of the Board should be affirmed, and the petition for review denied.

Respectfully Submitted,

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STATEMENT OF RELATED CASES

Based on a survey of the attorneys in this office, Counsel for Respondent states that he is unaware of any related cases.

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(A)(7)(B),(C), I certify that the text of the answering brief is double spaced proportionately spaced 14 point Times New Roman type, the footnotes are single spaced proportionately spaced 14 point Times New Roman, and the brief contains 5,117 words.

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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of February, 2001, two copies of the foregoing "Brief for Respondent" were served upon the counsel for petitioner, by depositing the same in the mail drop at the United States Department of Justice, Washington, D.C., in time for the Department's same-day mail collection service, to be sent by United States mail, first-class postage prepaid, addressed to:

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